

Internal Revenue Service  
**memorandum**

date: FEB 11 1991

to: Director, Internal Revenue Service Center  
Kansas City, MO  
Attn: Entity Control

from: Technical Assistant  
Employee Benefits and Exempt Organizations

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subject: CC:EE:3 - TR-45-1656-90  
Railroad Retirement Tax Act Status

Attached for your information and appropriate action is a copy of a letter dated December 18, 1990, from the Railroad Retirement Board concerning the status under the Railroad Retirement Act and the Railroad Unemployment Tax Act of the:



We have reviewed the opinion of the Railroad Retirement Board and concur in the conclusion reached by the Board that the company became an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts on [REDACTED]. It should file Forms CT-1 and Forms 941-E for all open years.

(Signed) Ronald L. Moore

RONALD L. MOORE

Attachment: Copy of letter from  
the Railroad Retirement Board

cc: Mr. Gary Kuper  
Internal Revenue Service  
200 South Hanley  
Clayton, MO 63105

08990

UNITED STATES OF AMERICA  
RAILROAD RETIREMENT BOARD  
844 RUSH STREET  
CHICAGO, ILLINOIS 60611

BUREAU OF LAW

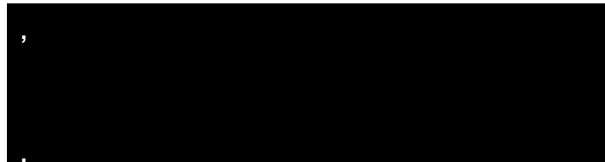
Assistant Chief Counsel  
(Employee Benefits and  
Exempt Organizations)  
Internal Revenue Service  
1111 Constitution Avenue., N.W.  
Washington, D.C. 20224

DEC 18 1990

Attention: CC:IND:1:3

Dear Sir:

In accordance with the coordination procedure established between the Internal Revenue Service and this Board, I am enclosing for your information a copy of an opinion in which I have expressed my determination as to the status under the Railroad Retirement and Railroad Unemployment Insurance Acts of the following:



Sincerely yours,

A handwritten signature in cursive script, appearing to read "Steven A. Bartholow".

Steven A. Bartholow  
Deputy General Counsel

Enclosure

UNITED STATES GOVERNMENT

RAILROAD RETIREMENT BOARD

**MEMORANDUM**

L - [REDACTED]

DEC 18 1990

TO: Director of Research and Employment Accounts

FROM: Deputy General Counsel

SUBJECT: [REDACTED]  
Employer Status Determination

This is in reference to your Form G-215 request of August 30, 1990, wherein you inquired as to the employer status of [REDACTED]. The status of [REDACTED] as an employer under the Railroad Retirement Act (RRA) and the Railroad Unemployment Insurance Act (RUIA) has not previously been considered.

In a letter dated [REDACTED], to [REDACTED], General Tax Attorney for the [REDACTED], [REDACTED] stated that [REDACTED] is a wholly-owned subsidiary of [REDACTED] that was originally incorporated in [REDACTED] as [REDACTED], a motor carrier. [REDACTED] stated that in [REDACTED] became a subsidiary of [REDACTED] and was authorized to engage in transportation as a common carrier by motor vehicle. In [REDACTED], [REDACTED] received Interstate Commerce Commission (ICC) permission to engage in transportation as a contract carrier by motor vehicle. [REDACTED] stated that in [REDACTED], the ICC issued a license authorizing [REDACTED] to engage in operations as a broker. On [REDACTED], [REDACTED] became a subsidiary of [REDACTED]. On [REDACTED], [REDACTED] changed its name to [REDACTED], with ICC authority to (1) engage in transportation as a common carrier by motor vehicle, (2) engage in transportation as a contract carrier by motor vehicle and (3) engage in operations as a broker.

[REDACTED] stated that "basically" [REDACTED] offers door-to-door transportation service for its customers, providing intermodal freight service using [REDACTED] units, including service between rail origins and destinations served by rail carriers.

1/ The [REDACTED] (B.A. No. [REDACTED]) appears on the Employer Status List, with service creditable from [REDACTED] to date. (See Legal Opinion L-[REDACTED].)

Director of Research and Employment Accounts

██████████ stated that ██████████ contracts with its clients or customers to move shipments from one point to another and that ██████████ rail subsidiaries have agreed to provide the rail transportation portion of the movement of such shipments at a fixed price per shipment per route. ██████████ contracts with ██████████ for rail service and leasing of terminal facilities. ██████████ stated that ██████████ does not have the necessary motor power to transport its customers' products on its own. He stated further that currently, approximately twenty percent of the total transportation service ██████████ provides to its customers is over the road, and the balance of the transportation service is provided over rail.

██████████ stated that ██████████ employees broker bimodal freight, offering door-to-door service over both rail and highway, and that ██████████ employees compete with ██████████ to the extent that they offer rail transportation services to shippers.

In response to a question as to whether ██████████ employees supervise any ██████████ employees, ██████████ stated that ██████████, Senior Vice President/General Manager of ██████████, reports to ██████████, ██████████ and ██████████, of ██████████.

██████████ stated that ██████████ does not provide employees for ██████████ or its rail subsidiaries and that ██████████ does not have any employees under contract to ██████████ or its rail subsidiaries. He further stated that ██████████ employees do not perform services for ██████████ or its rail subsidiaries, and that the ██████████ employees who are involved in the transportation of ██████████ units are compensated by ██████████ in the same manner as other ██████████ employees providing transportation services. ██████████ stated that ██████████ employees that work in terminal areas are provided safety training by ██████████, but that other than such safety instructions, ██████████ does not train ██████████.

██████████ stated that ██████████ employees perform certain functions for ██████████ in terminal areas that are leased from the ██████████. ██████████'s rail subsidiaries provide a crew to connect the ██████████ units to a locomotive and to operate the trains. In addition, ██████████ police provide security in the terminal areas, including the areas leased to ██████████. ██████████ stated that under the agreement between ██████████ and ██████████, ██████████ has agreed to provide train engines and related equipment and that as with all customers of ██████████, ██████████ participates in the weigh bill system.

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Both the RRA and the RUIA provide that the term "employer" includes a company which is directly or indirectly owned or controlled by or under common control with one or more rail carrier employers under the Acts and which operates any equipment or facility or performs any service in connection with the transportation of passengers or property by railroad. As a wholly-owned subsidiary of [REDACTED], [REDACTED] is under common control with the two rail carrier employers also owned by the [REDACTED] i.e., the [REDACTED] (B.A. No. [REDACTED], with service creditable from [REDACTED] to date) and [REDACTED] (B.A. No. [REDACTED], with service creditable from [REDACTED] to date). Thus, the first part of the statutory definition of employer is satisfied. The question then becomes whether or not [REDACTED] performs service in connection with railroad transportation. Section 202.7 of the Board's regulations explains that service is in connection with railroad transportation if:

"\* \* \* such service \* \* \* is reasonably directly related, functionally or economically, to the performance of obligations which a company or person or companies or persons have undertaken as a common carrier by railroad, or to the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad." (20 CFR 202.7).

Despite [REDACTED]'s assertion that [REDACTED] does not provide services to [REDACTED] or to its rail subsidiaries, a number of news stories which I have reviewed indicate otherwise. Specifically, those news stories indicate that [REDACTED] inaugurated [REDACTED] in [REDACTED] in order to provide competition to the trucking business.

According to an article in the [REDACTED] section, "[REDACTED] is the only railroad using [REDACTED], truck trailers with a secondary set of steel wheels that allow them to travel on rail lines." [REDACTED], identified in both the [REDACTED] article and in [REDACTED]'s letter as [REDACTED]'s Assistant Vice President for international and intermodal marketing<sup>2/</sup>, is quoted in that article as stating that the [REDACTED] are attractive because they eliminate the need for flatcars. The article also stated that [REDACTED] had abandoned its traditional "piggyback" service because it was losing money, and then switched to the "revolutionary" [REDACTED] technology.

<sup>2/</sup> It must again be noted that [REDACTED] also stated that [REDACTED], Senior Vice President/General Manager of [REDACTED], reports to [REDACTED].

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An article in [REDACTED] on [REDACTED], provides additional support for the conclusion that the services provided by [REDACTED] are intimately tied in with the economic welfare of the [REDACTED] and its rail carrier subsidiaries. That article begins with the following:

"[REDACTED]'s competitive answer to the trucking business got rolling in a [REDACTED] freight yard in [REDACTED].

"Using truck trailers designed to run on railroad tracks, [REDACTED] began hauling [REDACTED] from [REDACTED] to the [REDACTED] area.

"The trailers are hauled to and from freight yards by truck tractors.

"The service, known as [REDACTED], has boomed.

"When [REDACTED] inaugurated the service in [REDACTED], the railroad reported \$[REDACTED] in [REDACTED] sales.

"That jumped to \$[REDACTED] in [REDACTED], \$[REDACTED] in [REDACTED] and is projected to hit \$[REDACTED] in [REDACTED]."

[REDACTED] is quoted in this article as stating that [REDACTED] began with one train a day out of [REDACTED], added a second in [REDACTED] and a third in [REDACTED]. [REDACTED] stated that, "It's the best avenue we know to take freight off the highways." [REDACTED] also said that the average haul is [REDACTED] miles by rail with [REDACTED] miles on either end driven by truck drivers, who are subcontracted by the railroad. The article concludes with the following statement:

"[REDACTED] officials say their service has been more successful because they have marketed it directly to customers instead of going through third-party shipper's agents."

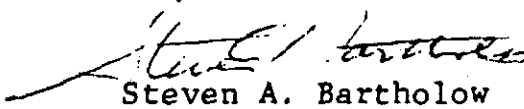
A financial report issued on [REDACTED], by [REDACTED] stated that [REDACTED] said that it planned to spend \$[REDACTED] dollars in [REDACTED] for facilities to handle new growth in its [REDACTED] service, intermodal, bulk distribution and automotive services.

A report issued by [REDACTED] on [REDACTED] stated that among major equipment expenditures planned by [REDACTED]'s two rail subsidiaries in [REDACTED] was the purchase of [REDACTED] units for [REDACTED]. In addition, the article reported that the subsidiaries' planned spending on intermodal facilities included additional terminals for [REDACTED].

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The articles cited above show that [REDACTED] was acquired by [REDACTED] in order to bolster the railroad freight business conducted by its [REDACTED] rail carrier subsidiaries and that [REDACTED] has been operated and funded under the control and direction of the [REDACTED] in such a manner as to achieve that goal. The articles demonstrate that the services provided by [REDACTED] are woven into the overall operations of the [REDACTED] and its rail subsidiaries. Because [REDACTED] is under common control with [REDACTED] rail carrier employers and provides service in connection with railroad transportation, it is my opinion that it has been an employer under the RRA and the RUIA since [REDACTED], the date on which it became a subsidiary of the [REDACTED].

A Form G-215 giving effect to the foregoing is attached.

  
Steven A. Bartholow

Attachment